48

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MA (C) No. 542 of 2006.

Appellants

1. Sanjeev Khunte S/o Abhe Ram Khunte aged 25 years (Driver of the offending Vehicle) R/o Village Baloudi PS Sarseeva Distt.Raipur (CG)
2. Abhe Ram Khunte S/o Dharmu Khunte aged 55 years (Owner of the offending vehicle) R/o Village Baloudi PS Sarseeva Distt.Raipur (CG)

Versus

Respondents

1) Rakhi bai Widow of Late Sammelal Manhar Caste Satnami aged 30 years,

2) Minor Ravi Kumar S/ late Sammelal aged 10 years,
3) Minor Ku.Seema D/o late Sammelal aged 2 years,

Above minor respondents No 2 & 3 through their Guardian mother Rakhi Bai Widow of late Sammelal all R/o Vilage Baloudi PS Sarseeva Distt Raipur (CG)

4) Bajaj Allianz General Insurance Company Ltd.

MA (C) No. 549 of 2006.

Appellants

1. Sanjeev Khunte S/o Abhe Ram Khunte aged 25 years caste Satnami, Driver of the offending Vehicle
2. Abhe Ram Khunte S/o Dharmu Khunte aged 55

year, owner of the offending vehicle,

Both R/o Village Baloudi PS Sarseevan Distt.Raipur (CG)

Versus

Respondents

1. Om Prakash S/o Nand Kumar Satnami aged 14 years through Guardian Father Nand Kumar S/o Bhanga Satnami aged 35 years R/o Village Lakhuridih PS Sarseevan Distt. Raipur (CG)
2. Bajaj Allianz General Insurance Company Ltd Branch Office First Floor Chouhan Complex, near Rajkumar College LMS Show Room, Raipur Distt.Raipur (CG)

Present : Shri KN Nande, counsel for the appellants.
None for the respondents.

ORAL ORDER

(Passed on 20th March, 2007)

The following oral order of the Court was passed by

Vijay Kumar Shrivastava, J.

The instant appeals under Section 173 of the Motor Vehicle Act 1988 (henceforth "the Act") are directed against the award dated 28.07.2006, passed by First Additional Motor Accident Claim Tribunal, Bilaspur (henceforth "the Tribunal").

2) On 18.04.2006, Same Lal, Om Prakash and number of persons were returning from barat on a tractor-trolley No. CG-04-D-6164 & 6165 (for short "the vehicle"). Appellant

No.1 - Sanjeev Khunte was driving the vehicle. As a result of his rash and negligent driving, the vehicle turned turtle, Same Lal, Om Prakash and others fell down from the vehicle and were injured. Same Lal sustained fatal injuries and succumbed to those. Appellant No.2 is owner of the vehicle and the vehicle was insured with respondent- Bajaj Allianz General Insurance Company Limited. Legal representatives of Same Lal filed an application under Section 166 of the Act. Om Prakash also filed separate application under Section 166 of the Act. Both the applications were filed for awarding compensation against appellants no.1 & 2, and respondent-Insurance Company, who are driver, owner and insurer of the vehicle respectively. Both the applications were registered as Claim Case No.163 & 166/2006 respectively.

3) Both the appellants and respondent-Insurer contested the claim. The appellants took a defence that when appellant No.1 driving the vehicle, was coming back, on way vehicle was stopped by Same Lal, Om Prakash and number of persons, after stopping the vehicle, all of them forcibly boarded it. The vehicle carrying all these persons met with an accident, Same Lal, Om Prakash and others fell down from the vehicle and sustained injuries. They further pleaded that appellant No.1 did not drive the vehicle in a rash and negligent manner; even otherwise, the

vehicle is insured with respondent/Bajaj Allianz Insurance Company; as such, for payment of compensation, responsibility lies on insurer. On the other hand, respondent/Bajaj Allianz Insurance Company pleaded that the vehicle was insured only for agricultural purposes. Appellants carried a number of persons, who were members of barat party to the place of marriage, and after ceremony, carrying all those persons in that vehicle was coming back to village, on way the accident took place. The vehicle was not insured for commercial purposes, therefore, appellants committed breach of policy, and hence, insurance company is not liable to pay compensation.

4) Tribunal considered the oral evidence adduced by the parties and also considered the documents produced before it; and held that when the vehicle met with an accident, it was carrying 40-50 members of barat party; the Tribunal further held that, at the time of incident, the vehicle was not in use for agricultural purposes. Income of Same Lal (since deceased) was not proved, therefore, a notional income of Rs.2,000/- per month has been taken for assessment. To establish that Om Prakash suffered permanent disability, there was no legal evidence before the Tribunal. The Tribunal in these circumstances, exonerated respondent/Bajaj Allianz Insurance Company and passed the award against the appellants, as below :

Claim Case No.163/2006

a)	Loss of dependency	Rs.3,06,000/-
b)	Funeral/sufferings	Rs.10,000/-
	Total	Rs.3,16,000/-

Claim Case No.166/2006

a)	For pain and suffering	Rs.5,000/-
b)	Medical	Rs.5,000/-
c)	Diet	Rs.2,000/-
	Total	Rs.12,000/-

5) Learned counsel for the appellants contended that Tribunal erred in exonerating respondent/Bajaj Allianz Insurance Company from reimbursement of the award and also erred by awarding compensation to the claimants on higher side.

6) Witness Rakhi Bai, Jagdish in their statement deposed that Same Lal went with barat party on the vehicle and was returning on the same vehicle. Omprakash also corroborates the story. From the statement of appellant No.1 and from one of his witness Tularam, it is clear that Same Lal and other persons boarded on his vehicle and were coming to village in that vehicle. Both the witnesses introduced a story that Same Lal and others forcibly boarded the vehicle. When barat party was carried to the place of marriage, obvious enough that the barat party will return after ceremony by that vehicle, therefore, it is difficult to believe that on return barat party forcibly boarded the vehicle. From the statement of claimants' witnesses, and applying principle of preponderance of probability, as well report, it was proved that from village itself barat party was carried to

place of marriage and after ceremony the vehicle carrying those members of barat party was returning back when the accident took place.

7) Tribunal appreciated the evidence meticulously and also considered the principle of preponderance of probability, non-examination of witnesses and thereafter recorded his findings. From the material on record as discussed above, the findings recorded by the Tribunal do not suffer from any infirmity or illegality which may call for any interference.

8) Undisputedly, the vehicle was insured for agricultural purpose. It was proved that the vehicle was used by the appellants for other than agricultural purposes, therefore, when appellants themselves committed breach of condition of the insurance policy, they themselves are liable for paying the compensation and Insurance Company cannot be burdened with the reimbursement of award for the fault of appellants. Learned Tribunal very correctly exonerated the Insurance Company from paying the compensation.

9) To establish income of the deceased Same Lal, no legal evidence was adduced. Therefore, the Court took notional income Rs.2,000/- per month and having considered the age of the deceased, who was at the time of incident 32 years, by adopting multiplier method, calculated loss of dependency and also allowed amount towards other heads. The award of

Rs.3,16,000/- on the death claim, cannot be said to be on the higher side. So far as compensation awarded to Om Prakash is concerned, he is a minor boy of 14 years, who sustained injuries in the said accident. Therefore, on various heads, compensation of Rs.12,000/- allowed to him as mentioned above also cannot be held to be on higher side. In the result, both the appeals being devoid of substance are dismissed *in limine*. No costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge